

115TH CONGRESS
1ST SESSION

S. 762

To amend the Internal Revenue Code of 1986 to reform provisions relating to whistleblowers.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2017

Mr. GRASSLEY (for himself and Mr. WYDEN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to reform provisions relating to whistleblowers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “IRS Whistleblower Im-
5 provements Act of 2017”.

6 **SEC. 2. WHISTLEBLOWER REFORMS.**

7 (a) MODIFICATIONS TO DISCLOSURE RULES FOR
8 WHISTLEBLOWERS.—

1 (1) IN GENERAL.—Section 6103(k) of the In-
2 ternal Revenue Code of 1986 is amended by adding
3 at the end the following new paragraph:

4 “(13) DISCLOSURE TO WHISTLEBLOWERS.—

5 “(A) IN GENERAL.—The Secretary may
6 disclose, to any individual providing information
7 relating to any purpose described in paragraph
8 (1) or (2) of section 7623(a), return informa-
9 tion related to the investigation of any taxpayer
10 with respect to whom the individual has pro-
11 vided such information, but only to the extent
12 that such disclosure is necessary in obtaining
13 information, which is not otherwise reasonably
14 available, with respect to the correct determina-
15 tion of tax liability for tax, or the amount to be
16 collected with respect to the enforcement of any
17 other provision of this title.

18 “(B) UPDATES ON WHISTLEBLOWER IN-
19 VESTIGATIONS.—The Secretary shall disclose to
20 an individual providing information relating to
21 any purpose described in paragraph (1) or (2)
22 of section 7623(a) the following:

23 “(i) Not later than 30 days after a
24 case for which the individual has provided
25 information has been referred for an audit

1 or examination, a notice with respect to
2 such referral.

3 “(ii) Not later than 30 days after a
4 taxpayer with respect to whom the indi-
5 vidual has provided information has made
6 a payment of tax with respect to tax liabil-
7 ity to which such information relates, a no-
8 tice with respect to such payment.

9 “(iii) Subject to such requirements
10 and conditions as are prescribed by the
11 Secretary, upon a written request by such
12 individual—

13 “(I) information on the status
14 and stage of any investigation or ac-
15 tion related to such information, and

16 “(II) in the case of a determina-
17 tion of the amount of any award
18 under section 7623(b), the reasons for
19 such determination.

20 Clause (iii) shall not apply to any information
21 if the Secretary determines that disclosure of
22 such information would seriously impair Fed-
23 eral tax administration. Information described
24 in clauses (i), (ii), and (iii) may be disclosed to
25 a designee of the individual providing such in-

1 formation in accordance with guidance provided
 2 by the Secretary.”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) CONFIDENTIALITY OF INFORMA-
 5 TION.—Section 6103(a)(3) of such Code is
 6 amended by striking “subsection (k)(10)” and
 7 inserting “paragraph (10) or (13) of subsection
 8 (k)”.

9 (B) PENALTY FOR UNAUTHORIZED DIS-
 10 CLOSURE.—Section 7213(a)(2) of such Code is
 11 amended by striking “(k)(10)” and inserting
 12 “(k)(10) or (13)”.

13 (C) COORDINATION WITH AUTHORITY TO
 14 DISCLOSE FOR INVESTIGATIVE PURPOSES.—
 15 Section 6103(k)(6) of such Code is amended by
 16 adding at the end the following new sentence:
 17 “This paragraph shall not apply to any disclo-
 18 sure to an individual providing information re-
 19 lating to any purpose described in paragraph
 20 (1) or (2) of section 7623(a) which is made
 21 under paragraph (13)(A).”.

22 (b) PROTECTION AGAINST RETALIATION.—Section
 23 7623 of the Internal Revenue Code of 1986 is amended
 24 by adding at the end the following new subsection:

1 “(c) CIVIL ACTION TO PROTECT AGAINST RETALIA-
2 TION CASES.—

3 “(1) ANTI-RETALIATION WHISTLEBLOWER PRO-
4 TECTION FOR EMPLOYEES.—No employer or any of-
5 ficer, employee, contractor, subcontractor, or agent
6 of such employer may discharge, demote, suspend,
7 threaten, harass, or in any other manner discrimi-
8 nate against an employee in the terms and condi-
9 tions of employment (including through an act in the
10 ordinary course of such employee’s duties) in re-
11 prisal for any lawful act done by the employee—

12 “(A) to provide information, cause infor-
13 mation to be provided, or otherwise assist in an
14 investigation regarding underpayment of tax or
15 any conduct which the employee reasonably be-
16 lieves constitutes a violation of the internal rev-
17 enue laws or any provision of Federal law relat-
18 ing to tax fraud, when the information or as-
19 sistance is provided to the Internal Revenue
20 Service, the Secretary of the Treasury, the
21 Treasury Inspector General for Tax Adminis-
22 tration, the Comptroller General of the United
23 States, the Department of Justice, the United
24 States Congress, a person with supervisory au-
25 thority over the employee, or any other person

1 working for the employer who has the authority
2 to investigate, discover, or terminate mis-
3 conduct, or

4 “(B) to testify, participate in, or otherwise
5 assist in any administrative or judicial action
6 taken by the Internal Revenue Service relating
7 to an alleged underpayment of tax or any viola-
8 tion of the internal revenue laws or any provi-
9 sion of Federal law relating to tax fraud.

10 “(2) ENFORCEMENT ACTION.—

11 “(A) IN GENERAL.—A person who alleges
12 discharge or other reprisal by any person in vio-
13 lation of paragraph (1) may seek relief under
14 paragraph (3) by—

15 “(i) filing a complaint with the Sec-
16 retary of Labor, or

17 “(ii) if the Secretary of Labor has not
18 issued a final decision within 180 days of
19 the filing of the complaint and there is no
20 showing that such delay is due to the bad
21 faith of the claimant, bringing an action at
22 law or equity for de novo review in the ap-
23 propriate district court of the United
24 States, which shall have jurisdiction over

such an action without regard to the amount in controversy.

“(B) PROCEDURE.—

“(i) IN GENERAL.—An action under subparagraph (A)(ii) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

“(ii) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

“(iii) BURDENS OF PROOF.—An action brought under subparagraph (A)(ii) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code, except that in applying such section—

“(I) ‘behavior described in paragraph (1)’ shall be substituted for ‘behavior described in paragraphs (1) through (4) of subsection (a)’ each place it appears in paragraph (2)(B) thereof, and

1 “(II) ‘a violation of paragraph
2 (1)’ shall be substituted for ‘a viola-
3 tion of subsection (a)’ each place it
4 appears.

5 “(iv) STATUTE OF LIMITATIONS.—A
6 complaint under subparagraph (A)(i) shall
7 be filed not later than 180 days after the
8 date on which the violation occurs.

9 “(v) JURY TRIAL.—A party to an ac-
10 tion brought under subparagraph (A)(ii)
11 shall be entitled to trial by jury.

12 “(3) REMEDIES.—

13 “(A) IN GENERAL.—An employee pre-
14 vailing in any action under paragraph (2)(A)
15 shall be entitled to all relief necessary to make
16 the employee whole.

17 “(B) COMPENSATORY DAMAGES.—Relief
18 for any action under subparagraph (A) shall in-
19 clude—

20 “(i) reinstatement with the same se-
21 niority status that the employee would
22 have had, but for the reprisal,

23 “(ii) the sum of 200 percent of the
24 amount of back pay and 100 percent of all
25 lost benefits, with interest, and

1 “(iii) compensation for any special
2 damages sustained as a result of the re-
3 prisal, including litigation costs, expert wit-
4 ness fees, and reasonable attorney fees.

5 “(4) RIGHTS RETAINED BY EMPLOYEE.—Noth-
6 ing in this section shall be deemed to diminish the
7 rights, privileges, or remedies of any employee under
8 any Federal or State law, or under any collective
9 bargaining agreement.

10 “(5) NONENFORCEABILITY OF CERTAIN PROVI-
11 SIONS WAIVING RIGHTS AND REMEDIES OR REQUIR-
12 ING ARBITRATION OF DISPUTES.—

13 “(A) WAIVER OF RIGHTS AND REM-
14 EDIES.—The rights and remedies provided for
15 in this subsection may not be waived by any
16 agreement, policy form, or condition of employ-
17 ment, including by a predispute arbitration
18 agreement.

19 “(B) PREDISPUTE ARBITRATION AGREE-
20 MENTS.—No predispute arbitration agreement
21 shall be valid or enforceable, if the agreement
22 requires arbitration of a dispute arising under
23 this subsection.”.

24 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 subsection (a) shall apply to disclosures made after
3 the date of the enactment of this Act.

4 (2) CIVIL PROTECTION.—The amendment made
5 by subsection (b) shall take effect on the date of the
6 enactment of this Act.

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